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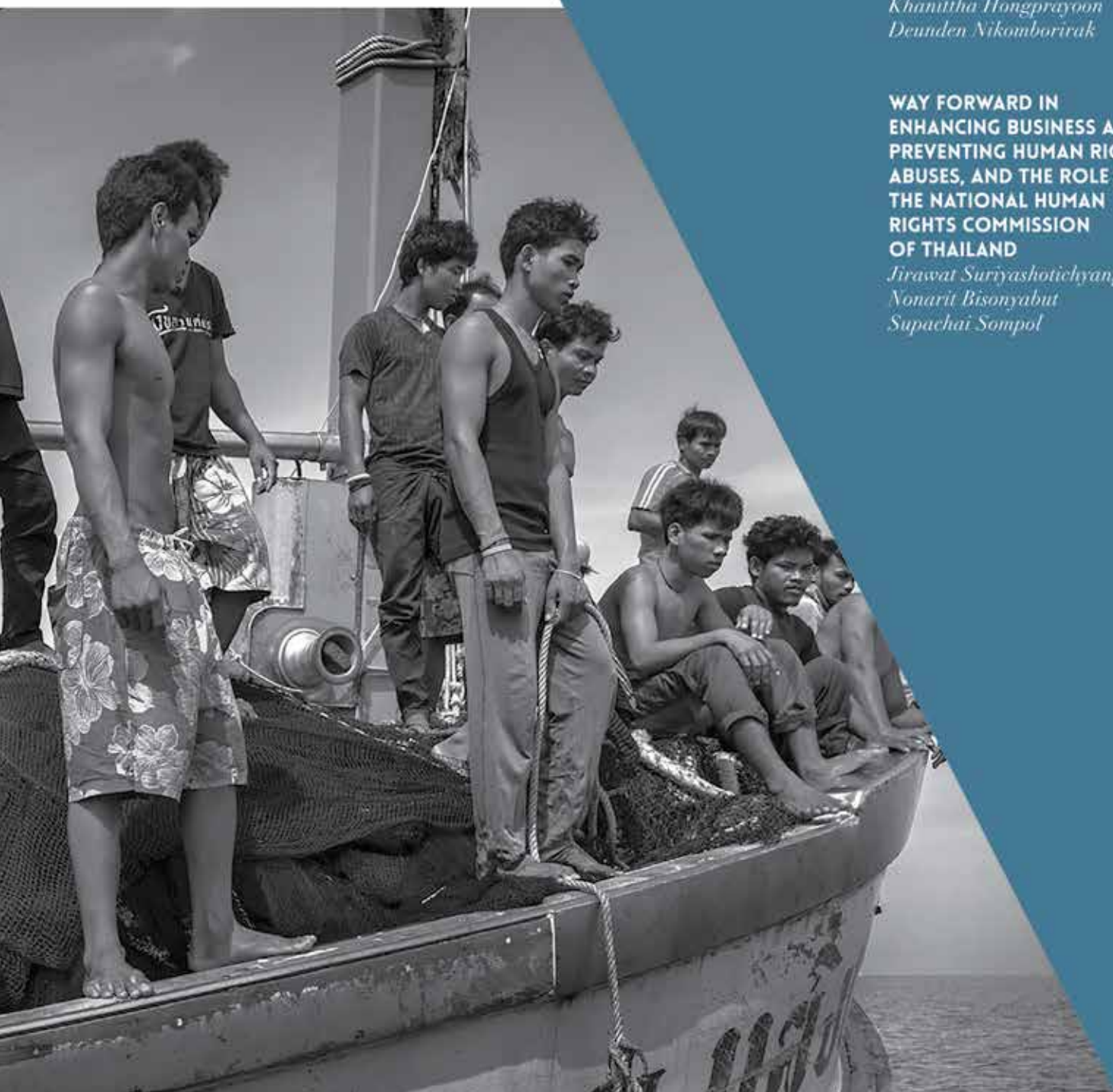
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**CORRUPTION:
LESSONS LEARNED
FROM SEOUL TO BANGKOK**

*Khanittha Hongprayoon
Deunden Nikomborirak*

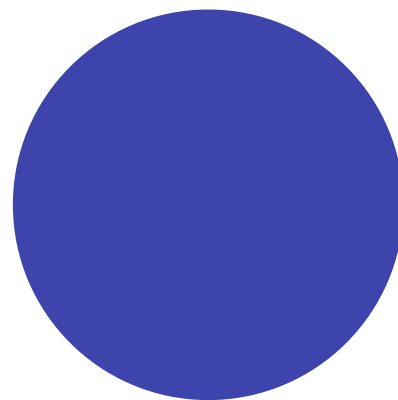
**WAY FORWARD IN
ENHANCING BUSINESS AND
PREVENTING HUMAN RIGHTS
ABUSES, AND THE ROLE OF
THE NATIONAL HUMAN
RIGHTS COMMISSION
OF THAILAND**

*Jirawat Suriyashotichyangkul
Nonarit Bisonyabut
Supachai Sompol*



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The Thailand Development Research Institute Foundation was established in 1984 to conduct policy research and disseminate results to the public and private sectors. TDRI was conceived, created and registered as a non-profit, non-governmental foundation, and is recognized as such by the Royal Thai Government. The Institute does technical and policy analyses to support the formulation of policies with long-term implications for sustaining social and economic development.

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CORRUPTION: LESSONS LEARNED FROM SEOUL TO BANGKOK

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1. INTRODUCTION

Corruption is one of the key factors defining a country's level of social and economic development. Countries ranking highly in the Corruption Perception Index (CPI), which is constructed annually by Transparency International (TI), can better attract foreign investment and experts.

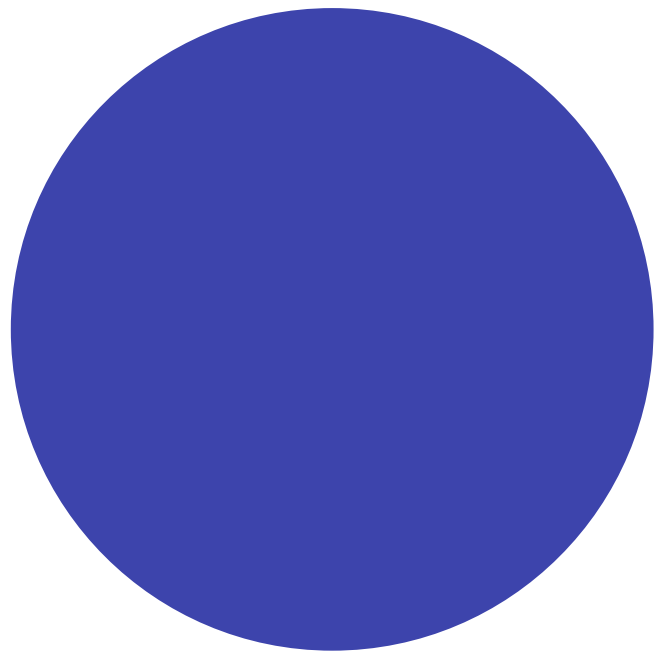
Fighting corruption requires tremendous efforts and resources, such as an effective anti-corruption strategy and various other measures, sufficient budget, qualified personnel and mobilization of multiple organizations. Most importantly, it requires endorsement from the government. Hence, dealing with corruption at the national level can be extremely challenging such that a government that

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wants “quick results” would certainly not choose to ignore those challenges.

There is some light at the end of the tunnel, however. Many national leaders were once local governors. For example, the President of Indonesia, Mr. Jojo Widodo, used to be the mayor of Jakarta; the President of the Philippines, Mr. Rodrigo Duterte, used to be the mayor of Davao City; and many former presidents of the United States, including Jimmy Carter, Ronald Reagan, Bill Clinton and George W. Bush, were once state governors. If local politics and administration is a stepping-stone for national counterparts, then it may be worthwhile to study anti-corruption schemes initiated by local politicians as they may become a testing ground for larger schemes at the national level. In this study, we



examine the case of the Republic of Korea where local and national politics are closely intertwined.

2. A BRIEF HISTORY OF CORRUPTION IN THE REPUBLIC OF KOREA

The Republic of Korea (commonly referred to as ROK or South Korea) used to be one of the countries rife with corruption. Following the end of World War II in 1945 until 1993, the ROK was ruled by military dictatorships. During this era, streams of corruption spread through all levels of government, from leaders to public servants. Leaders became corrupted by defrauding sources of overseas financial aid assistance for post-war reconstruction, in particular that from the United States. In addition, the chaebols – family-run business conglomerates – were another major source of corruption. Chaebols and political leaders thrived under a patronage system. The chaebols received financial support from the government, such as soft loans, subsidies or tax benefits, in exchange for bribes that might take the form of legal corporate financial donations to foundations set up by the ruling president’s family members or other relatives.

Table 1: Average number of corruption cases involving Seoul Metropolitan Government officials recorded by that government during each mayor's term during the period 1995-2005

Period Mayor	Types of cases			Total average number of corruption cases
	Bribery	Dereliction of duty	Others	
1995 – 1997 Mayor Cho Soon	34	71	6	111
1998 – 2001 Mayor Goh Kun	19	45	28	92
2002 – 2005 Mayor Lee Myung Bak	16	17	45	79

Source: Seoul Solution. 2014. *e-Government of Seoul opens a new chapter of transparency, efficiency and public participation*. Available from <https://seoulsolution.kr/en/content/e-government-seoul-opens-new-chapter-transparency-efficiency-and-public-participation?language=en>

In 1994, the ROK entered a democratic era with elected civilian governments. As a demonstration of its break from the traditionally opaque administration of former dictatorial governments, elected governments focused more on the issues of administrative transparency and anti-corruption efforts. During this period, many nationwide anti-corruption schemes were introduced. As part of those schemes, all provinces in the ROK, including Seoul, must hold local mayoral elections in order to decentralize the government.

Although the ROK was thus administered with greater transparency, corruption during the military dictatorship era continued to take its toll. In 1994, the Seongsu Bridge in Seoul crashed due to sub-standard construction which caused the death of 32 people. In the following year, the Sampoong Department Store in Seoul collapsed following a gas explosion which caused the death of more than 500 people. Investigation into both tragedies found that a number of Seoul Metropolitan Government (SMG) public servants were involved in both disaster cases. A lack of caution was identified as a characteristic of inspecting officials in the case of the Seongsu Bridge and in their approval of a misleading construction plan for the Sampoong Department Store. These shocking disasters triggered a call for a major

governance reform of the SMG.

In 1998, the SMG under the administration of Mayor Goh Kun earnestly declared a fight against corruption; a range of systematic and comprehensive measures were launched. The massive anti-corruption crackdown resulted in a sharp fall in the average number of bribery, dereliction of duty and other types of corrupt practices,¹ from 111 cases to 92 cases per annum, as can be seen in Table 1. The successful SMG anti-corruption scheme helped boost the city's reputation in both the domestic and the international arenas.

The effectiveness of the anti-corruption schemes implemented by the SMG offers valuable lessons for the Bangkok Metropolitan Administration (BMA). Both Seoul and Bangkok share many common characteristics. For example, both are capital cities that are considered to be metropolitan areas and both have elected mayors.

The objective of this paper is to examine successful anti-corruption measures implemented by the SMG in order to propose possible anti-corruption schemes for the BMA.

The paper is divided into five sections. Sections 3 and 4 contain an elaboration of the anti-

¹ The number of corruption cases was recorded by the SMG audit team.

corruption environment and measures of the SMG and the BMA respectively. Section 5 contains a set of recommendations for the BMA.

3. ANTI-CORRUPTION SCHEME IMPLEMENTED BY THE SEOUL METROPOLITAN GOVERNMENT

As the capital city of the ROK, Seoul is also at the heart of development in several ways, including investment in infrastructure and facilities. The city is, however, a channel for both public officers and private investors to become involved in corruption. The two previously mentioned tragedies, namely the collapse of Seongsu Bridge and Sampoong Department Store, are good examples of local government corruption resulting in the loss of life and property.

Since 1998, the SMG – under Mayor Goh Kun – declared a “war on corruption.” A systematic approach and array of measures were adopted to make administrative and public services as transparent as possible. Among the measures, an online public service system and public service evaluation system stood out as the most effective and successful measures in conducting this “war.”

The online public service system started in 1998 when the mayor of Seoul declared war on corruption. The Online Procedures ENhancement for Civil Application (OPEN) system was introduced to minimize physical contact between public officers and local residents who need information about public services, want to file complaints, or wish to submit applications for specific permits or licenses; this measure was aimed at precluding the opportunity to offer or collect bribes. The system also enables residents to track the status of their applications online. Furthermore, status reports also show the name and contact details of the officer handling a particular application. Local residents who wish to file an application for permits and licenses, as shown in Table 2, can access the system online 24 hours a day 7 days a week.



Goh Kun



Lee Myung Bak

Table 2: Permits and licensing procedures made available online under the OPEN system

Sector	Procedures	Sector	Procedures
Industry and economy	<ul style="list-style-type: none"> • Registration for opening or altering large-sized shops • Approval and registration for construction of factories • Permission and administrative measures for livestock businesses • Registration and administrative measures for the operation of gasoline stations 	Environment	<ul style="list-style-type: none"> • Permission for waste treatment • Registration of car garages • Permission for businesses producing sound pollution • Registration of businesses involved with the transportation or administration of toxic materials
Construction	<ul style="list-style-type: none"> • Registration of general and specific construction businesses • Permission for river occupations 	Housing construction	<ul style="list-style-type: none"> • Construction permits • Permission for outdoor billboard advertisements
Firefighting	<ul style="list-style-type: none"> • Permission for the installation and audit of fire-prevention facilities, check-up upon completion and administrative measures involving facilities producing risky substances 	Culture and tourism	<ul style="list-style-type: none"> • Registration of sports facilities • Registration of tourist businesses
Urban planning	<ul style="list-style-type: none"> • Permission for activities that alter land quality or shape • Approval of urban development plans 	Transportation	<ul style="list-style-type: none"> • Permission for express/suburban bus terminal projects • Registration of transportation business • Truck and cargo transport vehicles registration • Permission for transfer of personal taxi license
Health & Welfare	<ul style="list-style-type: none"> • Permission for the operation of adult entertainment clubs 		

Source: Seoul Solution. 2014. Ibid.



Within the first seven months of operation, the number of visitors to the online permit and licensing website reached 240,000 and climbed to 3.5 million later in the year. In 1999, the system received favorable recognition at both domestic and international forums. The system was applied to national as well as local administrations. At the international level, the World Bank, Organisation for Economic Co-operation and Development, and Transparency International credited the OPEN system as being the most transparent system in the world. In addition, in 2001 the SMG became a co-host of the Seoul Anti-Corruption Symposium together with the United Nations Department of Economic and Social Affairs. The OPEN system manual was translated into all six official languages of the United Nations: Arabic, Chinese, English, French, Russian, and Spanish.

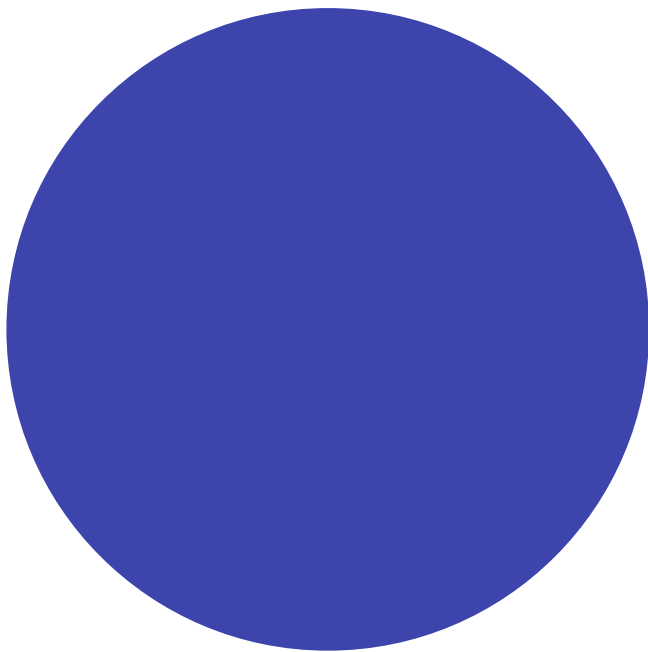
Another prominent scheme introduced by the SMG that helped promote the accountability and transparency of the SMG administration was the public service evaluation scheme. Several performance indices were introduced including the Anti-Corruption Index (ACI) and the Seoul Service Index (SSI), brief details of which are as follows:

1. The Anti-Corruption Index is aimed at promoting good governance for better administrative and public service within various departments and district offices. The ACI was compiled by asking local residents to fill out a questionnaire assessing the following:

- The extent to which administrative procedures are fair;
- The extent to which the information disclosure and administrative regulation is appropriate;
- The availability of reporting channels to expose corruption cases;
- The level of bribery.

After the launch of the ACI in 1999, the media often published ACI details, revealing the names of SMG departments and district offices that received the highest and the lowest ACI scores. This served to put social pressure on the organizations with low scores to improve their governance system. On the contrary, agencies with the highest ACI scores received a range of incentives from the SMG government, such as the Anti-Corruption Effort Award.

2. The Seoul Service Index is used to



determine the level of satisfaction with SMG public services. The SSI is evaluated by two parties – external experts and residents.

The external expert evaluation index is called the Seoul Service Potential Index (SSPI). It measures the internal process management of each department and district, such as resource usage, leadership, and working process.

The resident evaluation index is known as the Seoul Service Quality Index (SSQI). A questionnaire is used to rate satisfaction with the level of service provided by the SMG in several areas, such as public relations, health services, water works, public transportation, including the subway system, and the cleaning of public areas.

The results of both SSPI and SSQI are used to improve the quality of public services. Areas that received a low satisfaction rate are targeted for priority development. The SMG also rewards either the department or the district earning the highest SSI score.

The transparency scheme is one of the factors that helped Seoul to become one of the leading cities in the world. For example, of 70 cities globally it

was ranked 20th as the best metropolitan city by the Economist Intelligence Unit in 2012. The Global City Index 2015, prepared by A.T. Kearney, ranked Seoul the 10th best city of 125 cities around the world. Besides the indices for well-being and economic factors, effectiveness in government administrative factors, such as good governance and transparency management, usually receive relatively high scores among the sub-indicators used in these rankings.

4. ANTI-CORRUPTION ENVIRONMENT AND MEASURES IN BANGKOK

As with Seoul, Bangkok has experienced many corruption scandals, such as the purchase of an overpriced land-locked plot during the administration of Mayor Bhichit Rattakul, the last-minute fire-engine procurement on the last day before leaving office during the administration of Mayor Samak Sundaravej, and the purchase of an overpriced LED light tunnel decoration in front of city hall during the administration of Mayor M.L. Sukhumbhand Paribatra. Most corruption cases involve procurement and purchasing issues. However, unlike Seoul, the BMA does not give weight to corruption issues as it does with regard to environmental and traffic issues, which have more visible impacts on the quality of life of city inhabitants. Nevertheless, the BMA has introduced a similar online service system and performance evaluation system.

In 2012, the BMA introduced an online system for the submitting of applications to obtain construction permits known in Thai as *bai anuyart yim*, or the “Smiley Permit.”² The Smiley Permit scheme is supposed to shorten the approval process for obtaining construction permits, from at least 5 or 6 months to just 1 month, and increase the transparency of the working process. As with the OPEN system of the SMG, Smiley Permit applicants can track their application progress online at all times.

In practice, however, the online service faces

² News release on Smiley Permit. 2012, June 13. Retrieved on July 27, 2016, from https://www.prachachat.net/news_detail.php?news-id=1339566254 (in Thai).

several limitations. Although it is advertised as an online system, some of the procedures still have to be done manually. For example, instead of sending required documents electronically, applicants must file all paper forms at the Public Works Department located in a district office. In term of transparency, the system enables applicants to track only the dates of each procedure completed, while the OPEN system provides the name, address, and contact number of the officer handling the particular application. Lastly, very few people are aware of the scheme.

In addition to the online system, in 2011 the BMA also introduced a service-quality performance evaluation system among functional departments and district offices. The BMA assigned eight evaluators to measure the service quality of both the functional departments and the districts. The district with the best performance would receive 100,000 baht from the BMA, while the top three outstanding functional departments would be awarded 3 million baht, 2 million baht and 1 million baht, respectively. The size of the prizes clearly indicates that the BMA gives importance to the service quality of the individual functional departments rather than that of the districts; this situation does not incentivize close coordination and cooperation across different departments.

Unlike the SSI of SMG, the BMA's evaluation scheme has several shortcomings. First, assessment of the quality of service is not performed by residents but a group of persons handpicked by the BMA itself. Second, the performance assessment gives weight to indicators that do not reflect service quality, such as the quality of the air, which has more to do with the type of fuel used by cars or the quality of the BMA's workplace environment, which is of concern to its own back office rather than the services provided to residents.

To sum up, the BMA schemes to promote greater efficiency and transparency in the delivery of its services to residents have not been properly implemented. The online system still requires face-to-face contact between the permit applicant and the officer, a situation which may continue to accommodate bribery. The performance evaluation

system appears to be designed in such a way that would ensure desired assessment results. These two schemes indicate that the BMA is not serious in its efforts to become more transparent and accountable to residents.

5. SUGGESTIONS AND RECOMMENDATIONS

The successful anti-corruption scheme implemented by the SMG offers a valuable case study for the BMA. Among various measures, the OPEN system and public service evaluation scheme have received accolades from both domestic and international forums. To boost the level of transparency and accountability of its administration, the BMA should seriously consider adapting similar schemes to fit with its working environment.

First, the BMA should prioritize the online system as the most important tool for its anti-corruption scheme. The online permit and licensing application service should help reduce bribery as well as increase the transparency of the administration. The implementation of such a scheme should not be overly demanding in terms of investment and management as the BMA already has an online service system in operation. It merely needs to ensure that all permits and licenses must be fully applied for online and that vital statistical data on public services availability and quality in its annual report are promptly disseminated through its website.

For statistical data, the BMA should publish data sets which are of public interest. Currently, the available data and statistics offered on the BMA website are very limited; most are basic data. Table 3 compares data and statistics made available to the public by the SMG and the BMA. It is crucial that the BMA appreciate that the data and statistics collected will not only assist in strategic planning for future development, but also provide vital information for the public to evaluate and monitor BMA administrative management.

Second, the BMA must develop a reliable and credible scheme to evaluate the quality of its

Table 3: Example of economically related sectors between Seoul Metropolitan Government and Bangkok Metropolitan Administration

Seoul Metropolitan Government (SMG) ¹	Bangkok Metropolitan Administration (BMA) ²
<ul style="list-style-type: none"> • Business – Business establishment by industry and employment • Agriculture – Area of agricultural land/farms; production of food; number of veterinarians, and livestock • Manufacturing and Energy – Industrial Production Index; industrial complex; and energy consumption per head • Trade, Banking, Other Services – Distribution stores; financial institutions; Consumer Price Index; and foreign investment 	<ul style="list-style-type: none"> • Number of hawkers • Tax collection – Signboard tax, local development tax, house and building tax

Sources: (1) SMG statistical data available from <http://english.seoul.go.kr/get-to-know-us/statistics-of-seoul/seoul-statistics-by-category/>
(2) BMA statistical data (in Thai) available from <http://203.155.220.230/bmainfo/graph/index.php>

main public services, such as hospitals, schools, libraries, and civil works. Currently, Bangkokians are not given any opportunity to provide feedback on their level of satisfaction with the public services which they are provided.

Disclosure of the level of service quality will help hold the BMA accountable. For example, in 2015 the Ministry of Education released the average O-Net³ scores of grade 12 students from all schools. Table 4 shows that students from BMA schools performed just slightly above the worst schools, which are locally administered schools in the provinces, in every subject. Furthermore, a 2016 survey of students between grades 1 and 4 in BMA schools found that 3,000 of the total 20,000 students lacked skills in reading and writing, while the remaining 17,000 students could barely read and write.⁴ Indeed, the poor outcome in education services should prompt the BMA to rethink the management of its schools.

³ Ordinary National Education Test.

⁴ <https://www.dailynews.co.th/bangkok/587957> Retrieved on July 27, 2016. (in Thai)

In conclusion, the online permit and licensing and data and statistics disclosure system and the public service quality evaluation system can be key mechanisms for helping the BMA to combat corruption as it helps promote better monitoring by the public. Moreover, the evaluation system creates both awareness and accountability for the BMA to deliver better performance that meets public needs.

If a future Bangkok Governor is able to see through these reforms to raise the profile of the BMA, then perhaps Thailand will have a chance to elect a local leader with proven anti-corruption record!

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Table 4: Average O-Net scores of students in grade 12 (Mathayomsuksa 6)

Type of school affiliation	Subject				
	Thai	Social studies	English	Mathematics	Science
Department of General Education	49.95	40.00	24.68	26.65	33.55
Office of Private Education Commission	47.70	38.65	27.49	26.68	32.91
Office of the Higher Education Commission (Demonstration Schools)	64.87	46.33	46.19	45.85	42.57
Under the monitoring of the Ministry of Education (Mahidol Wittayanusorn School)	81.49	58.32	75.53	92.21	67.22
Bangkok Metropolitan Administration (BMA)	45.25	36.57	21.86	22.66	30.29
Education Department, Pattaya City	51.85	39.46	25.73	26.34	32.37
Department of Local Administration, Ministry of Interior	43.42	37.03	20.25	21.98	31.03
Special Education Bureau	31.04	30.32	18.70	17.77	27.04

Source: <http://www.unigang.com/Article/36144> (in Thai)

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WAY FORWARD IN ENHANCING BUSINESS AND PREVENTING HUMAN RIGHTS ABUSES, AND THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND

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INTRODUCTION

Profit maximization is the ultimate goal for all kinds of businesses, as companies have as their primary concerns cost savings, marketing, branding and risk management. From time to time, the operation of businesses has evolved by focusing not only on lucrative gains, but also on business ethics and governance in order to prolong the function of businesses. As such, individual businesses must determine who could be their stakeholders, such as employees, shareholders, local communities, business partners and customers, and how they should treat them. These aspects become part of corporate policy as reflected in the annual reports of businesses or their websites in order to build a sense of trust and credibility.



In a globalized world, Thai and foreign investors simply establish companies and operate their businesses anywhere. Mobilization of capital widens opportunities for profit generation, although strict political and legal measures remain in some countries to constrain such mobilization, such as prohibiting certain occupations to alien or foreign employees in Thailand.

Business competition will be more challenging and become the driver for businesses taking action on other fronts in order to attract those who have either a direct or indirect relationship with their business while maintaining its reputation for being prosperous. Putting the spotlight on human rights is one of these actions.

Many cases all over the world have been witnessed where an unethical business could be harmful and affect not only end-users, but also communities as a whole. Thailand is no exception. There have been many rights-based violations in Thailand, such as those concerned with labor rights, community rights, consumer rights, economic and social rights. Other such violations include human trafficking in the fishing industry, lawsuit threats against communities brought by a gold mining company and working conditions in parts of the Thai poultry-processing industry. These examples reflect the fact that a business that lacks effective risk management skills and awareness of the linkage between business and human rights may lose its

profitability and its reputation. Nonetheless, the problems remain ongoing and unsolved.

BUSINESS AND HUMAN RIGHTS IN THE GLOBAL COMMUNITY

The global community has tried to address these problems by endorsing international guidelines for business and human rights, such as the United Nations Global Compact (UNGC),¹ United Nations Guiding Principles on Business and Human Rights,² OECD Guidelines for Multinational Enterprises,³ and OECD Guidelines on Corporate Governance of State-owned Enterprises.⁴ These guidelines are aimed at enabling a company to understand how to conduct its business without having adverse impacts on people's human rights, while seeking to prevent or mitigate instances of such impacts that are directly linked to its business operations, even if the company concerned had not contributed to such undesirable impacts.

To do this requires that the company enhance its role by interpreting such international legal frameworks and putting them into effect. Investors must realize that respecting human rights is crucial to achieving sustainable development.

Currently, the private sector has applied the concept of corporate social responsibility to communicate with stakeholders on how a business must be held accountable for, and proceed ethically with, its philanthropic activities and projects.

¹ United Nations Global Compact. (2014). "United Nations Global Compact: Guide to Corporate Sustainability." https://www.unglobalcompact.org/docs/publications/UN_Global_Compact_Guide_to_Corporate_Sustainability.pdf.

² Office of the United Nations High Commissioner for Human Rights. (2011). "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework." Geneva: United Nations.

³ Organisation for Economic Co-operation and Development (OECD). (2011). "OECD Guidelines for Multinational Enterprises." OECD Publishing. <http://dx.doi.org/10.1787/9789264115415-en>.

⁴ OECD. (2015). "OECD Guidelines on Corporate Governance of State-owned Enterprises." 2015 Edition. OECD Publishing. <http://dx.doi.org/10.1787/9789264244160-en>.



In order to identify, prevent, mitigate and account for how a company addresses issues that have negative impacts on human rights, the company should consider the following set of recommendations:

- (a) The company should recognize the international human rights standards that might be involved with its business operations. This would provide it with a guide for best practices and heighten awareness of the potential risks or harm that could be done;
- (b) The company should conduct due diligence to ensure that human rights are protected by reviewing its own policies and practices. It needs to assess whether its purchasing practices, employment practices, sourcing decisions and engagement with its suppliers creates an environment for exploitation and abuse of workers, or whether it enables responsible and ethical practices;⁵

⁵ Cindy Berman. "Effective human rights due diligence is good for business." <http://www.ethicaltrade.org/blog/effective-human-rights-due-diligence-good-business>.



- (c) Supply chains are becoming more complex, and labor markets are increasingly global. That means more workers are getting jobs, but are also more vulnerable to abuse and exploitation. These operations may face more obvious exposure to practices that are tantamount to modern-day slavery with examples of human rights abuses within their supply chains. The business should ensure that risks within its supply chains are identified and managed by conducting internal audits and risk assessments of the organization's supply chains; proper training and awareness; updating policies, procedures and supplier contracts to include verifying suppliers' compliance programmes; and onsite audits of high-risk suppliers;⁶
- (d) The company should establish or participate in effective operational-level

⁶ Christopher Walter and Hannah Edmonds. "Top 5 business and human rights concerns for companies to monitor." <https://www.globalpolicywatch.com/2017/03/top-5-business-and-human-rights-concerns-for-companies-to-monitor/>.

grievance mechanisms for individuals and communities that may be adversely affected. The internal process helps by providing important feedback on the effectiveness of the business enterprise's due diligence with regard to human rights issues from those directly affected, and the appropriate remedy found early before such grievances escalate;

- (e) In order to foster greater integration of human rights issues into corporate sustainability, the company should disclose policies and practices relating to human rights, and how to embed this better understanding into global reporting standards. Reporting on sustainability can also help an organization to measure, understand and communicate its economic, environmental, social and governance performance, and then set goals and manage change more effectively;⁷
- (f) To balance and create an inclusive society covering respect for human rights, the company should serve as a role model for others. To do so requires a strong network to be a driving force in raising awareness and providing technical assistance to its targeted group in order to safeguard good business ethics;
- (g) The company should work in synergy with national human rights institutions through consultation and mediation. There are successful cases where companies have initiated dialogue and collaboration with such agencies, and that has enabled them to obtain a social license to operate in the community and create a happy workplace for their staff.⁸

⁷ Global Reporting Initiative. "Sustainability Reporting." <https://www.globalreporting.org/information/sustainability-reporting/Pages/default.aspx>.

⁸ Nestlé Corporate Communications. (2016). "Nestlé's Corporate Business Principles." <http://www.nestle.com/aboutus/business-principles>.

As more individuals and organs of society start to recognize the value of human rights, companies can no longer rely only on traditional business strategies. They need to seek out new avenues and ways of moving forward to forge their reputation on the basis of good corporate ethics, social responsibility, governance and respect for human rights.

LESSONS LEARNED FROM A CASE STUDY: MIGRANT WORKERS IN THE THAI POULTRY INDUSTRY

In late June 2016, 14 migrant workers slipped away from a poultry farm where they were working in the Lopburi region of Thailand to escape harsh treatment, exhaustive working hours and despicable working conditions. These workers were subsequently sheltered by the Migrant Worker Rights Network in Thailand. The 14 workers told network officials that they had been subjected to abusive supervisors, and had been forced to work hours that stretched from morning into the night. With little to no time off, they endured terrible living conditions, sometimes being forced to sleep alongside the hatchling chickens. Trapped on an isolated farm, the workers could leave only for a single two-hour supervised trip per week. Their passports had been confiscated, effectively preventing them from leaving.

Thailand is one of the world's largest exporters of chicken products; it exports roughly 41 percent of its entire broiler poultry meat production to Europe.⁹ The industry is now riddled with allegations of abuse, debt bondage, document confiscation, high recruitment fees, long working hours and abysmal pay as has been publicized by Finnwatch Organization¹⁰ (a civic organization working to promote global corporate responsibility). Finnwatch found that labor abuses, including high recruitment fees and

the withholding of documents, had taken place at other large chicken farms, including some owned by a major Thai food conglomerate.

This dispute was considered by Thailand's National Human Rights Commission, but after investigation no violation was found. Action was later brought by the migrant workers against the owner of the chicken farm; simultaneously the chicken farm owner filed a defamation lawsuit in reprisal. The fight to achieve justice was intense, and it attracted the attention of international organizations. News about the scandal was broadcast all over the world by the media, and social campaigns were launched to pressure the major company concerned to show responsibility by investigating conditions for all workers in its poultry supply chains while ensuring that these 14 survivors would receive the compensation owed to them without delay.¹¹ Eventually, this issue "went viral globally" and very likely adversely affected the major Thai food corporation's reputation. It was also likely that it reduced the volume of purchase orders from Western countries as they enforce sanction policies against human rights violators. In the worst case scenario, the share value could be adversely affected if some shareholders sold their shares after learning that the company was not as seriously committed as it claimed to be with regard to its ethical code of conduct and related policies. At the same time, competent public agencies initiated efforts to upgrade working conditions and prevent human trafficking at the chicken farm.

The major Thai food corporation then announced that it had since ceased having links or business operations with that farm and would not renew them until a solution to the labor conflict had been reached. The corporation was taking this matter very seriously and said it would investigate the case further as it would not tolerate ongoing breaches of its corporate policies and wanted to quickly remedy the situation faced by the 14 migrant workers. In

⁹ <http://www.thaipoultry.org/Portals/5/Containers/border/%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%AA%E0%B9%88%E0%B8%87%E0%B8%AD%E0%B8%AD%E0%B8%81/Dec2015.pdf>.

¹⁰ Finnwatch. "Employment available in exchange for debt." <http://www.finnwatch.org/images/pdf/chickenproductionThailand.pdf>.

¹¹ Freedom United. (2016). "Fight slavery in the Thai chicken industry." <https://www.walkfree.org/thai-chicken/>.

order to prevent the situation from recurring, it developed labor standards for all supply chain companies to follow, according to the Thai labor law and international human rights standards. Such standards involve training, monitoring and internal and external audit programs. For those that were in breach, the company would temporarily revoke business relationships until the party concerned complied with those standards.

This case demonstrates how seriously the international community is committed to human rights protection. The abovementioned business is one of the actors that could play an important role in addressing human rights violations in its business operations and relationships with its supply chains, dealers and traders; otherwise, it could encounter adverse reactions as a result of breaches in its respect for human rights.

EXISTENCE OF THE NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND: PROGRESS IN CARRYING OUT ITS BUSINESS, AND BARRIERS TO PROMOTING HUMAN RIGHTS

The National Human Rights Commission of Thailand was established under the 1997 constitution and came into operation in July 2001 when the National Human Rights Commission Act B.E. 2542 (1999) took effect. Thailand's Commission has the status of an independent institution under the constitution. It is aimed mainly at promoting and protecting human rights and ensuring that the laws and regulations safeguarding human rights, including international human rights treaties, are implemented effectively. In order to guarantee protection of human rights, the Act mandates the Commission to perform its functions independently, free from government control and intervention by political or private interests.¹²

¹² Jakkrit Kuanpoth. "The National Human Rights Commission and Its Roles in Political, Social and Economic Development." <http://tdri.or.th/wp-content/uploads/2015/08/TDRI-QR-June2015.pdf>.

The Commission is also required to comply with related international standards and good practices for a national human rights institution. Such standards are stipulated in the Paris Principles as well as the Evaluation Guidelines of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Specifically, the national human rights institutions must identify their human rights objectives and provide for their independence, broad human rights mandate, adequate funding, and an inclusive and transparent selection and appointment process. The Principles are broadly accepted as the test of an institution's legitimacy and credibility.

The Paris Principles prioritize five functions of the national human rights institutions as follows:¹³

1. Promotional Function: National human rights institutions should undertake a variety of initiatives to promote human rights, including (a) human rights education and training in schools and informal sectors, as well as for professional careers; (b) public awareness initiatives; (c) media strategies; (d) publications; (e) seminars and/or workshops; and (f) community-based initiatives. National human rights institutions can also serve as a national repository or archive for human rights documents.

2. Protecting Function and Quasi-judicial Function: They include handling of complaints, acting as an *amicus curiae* (friend of the court), seeking redress or remedies through courts or other specialized tribunals. National human rights institutions need to foster efficient procedures for human rights protection, to monitor systematically compliance with its recommendations, and to disseminate the results to the public.

3. Advisory Function: With or without requests from related organizations, national human rights institutions need to give advice on: (a) draft bills or amendments of laws in order to ensure compliance with human rights principles and other

¹³ <http://www.nhrc.or.th/getattachment/061e4fdb-1c5d-4b67-b183-cea98d7681c9/>.



related national commitments; (b) any situation with human rights concerns or situations involving human rights violations that deserve attention from the government (if necessary, the national human rights institution may need to address the government's responses regarding such matters; and (c) ratification of international human rights treaties and assisting government agencies to comply with the obligations in practice. Advice to the government, parliament and other authorities may be undertaken through direct participation in working teams, written recommendations, and thematic or annual reports.

4. Monitoring Function: The function refers to four major responsibilities, namely (a) monitoring domestic human rights situations, such as seeking information and the truth about certain incidents, documenting, reporting and giving recommendations to related authorities; (b) monitoring some important situations; (c) monitoring places of detention to prevent torture and to ensure that international human rights standards are appropriately observed; and (d) monitoring the operation of various authorities and their compliance with international human rights obligations and commitments which they had earlier accepted. The results of the national human rights institution's operation should be analyzed and reported in its thematic or annual reports. Additionally, the national human rights institution can publicize such analysis or research to put pressure on related authorities to resolve problems in accordance with the proposed measures. The national human rights institution should also monitor and evaluate if and to what extent the authorities concerned appropriately carry out measures in accordance with the national human rights institution's recommendations.

5. Cooperation with Stakeholders and Other Bodies: The work of a national human rights institution must involve various stakeholders and other bodies, including the parliament, governmental bodies, international and foreign human rights institutions, judicial bodies and non-governmental organizations. It has to ensure that the most vulnerable groups are the most accessible to the national human rights institution. However, the work of national

human rights institutions must be non-partisan and results-oriented, based strictly on human rights principles.

In terms of promoting and protecting business and human rights, the National Human Rights Commission (NHRC) of Thailand ensures that the country follows the previously mentioned international human rights standards. By doing so, it fulfills its obligation to translate the UN Guiding Principles into Thai, produce a handbook on due diligence with regard to human rights, and initiating a project aimed specifically at the Thai tourism sector. This work was praised as an exemplary activity at the First United Nations Asia Regional Forum on Business and Human Rights, which was held in Doha, Qatar,¹⁴ on April 19 and 20, 2016.

The pilot project on the Thai tourism industry was aimed at sending a message to the global community that Thailand, especially the hotel and tourism sector, realized the importance of human rights and the application of the UN Guiding Principles in conducting business operations. NHRC decided to choose the hotel and tourism sector for the pilot project for the following reasons:¹⁵

- (a) The hotel and tourism industry is one of the key business sectors of Thailand. The income gained from direct tourism has been estimated to be as high as 12 trillion baht; in 2013, its contribution to the country's GDP increased from 9 percent (about 1 trillion baht) to 16 percent. When indirect income from the tourism industry is taken into account, the percentage of the total income from tourism accounts reached more than 20 percent of GDP, or about 2.4 trillion baht.
- (b) In 2013, Thailand was ranked as one of

¹⁴ Human Rights Council. "Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the Asia Forum on Business and Human Rights." Para 76, P. 17. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/107/05/PDF/G1610705.pdf?OpenElement>.

¹⁵ <http://www.nhrc.or.th/News/ปาฐกถาพิเศษ-เรื่อง-ธุรกิจการท่องเที่ยวและการโรงแรม.aspx?lang=en-US>.

the top 10 high-class tourist destinations in the world; more than 26.5 million foreign tourists travelled around Thailand that year. This means that the tourism business actually involves up to 25 million people from around the world each year, and the number of tourists continues to increase annually;

- (c) The hotel business and downstream industries have rapidly and continually expanded, leading to an increase in the direct employment of more than 2.1 million persons in 2014 (5.8 percent of the total work force). Moreover, in 2015, the rate of employment was predicted to have grown by 0.2 percent with 2,215,500 total positions (accounting for 5.7 percent of total employment), including employment in hotels, travel agencies, logistics and transportation services, and restaurant and entertainment establishments.

In conclusion, NHRC initiated the pilot project in this business sector because the massive volume of tourists and capital flows would result in job opportunities and economic growth. However, this business sector could face problems if it is not concerned about human rights while conducting its business. In order to avoid catastrophes from human rights violations and the loss of profits, as well as its reputation, this project was aimed at disseminating knowledge and creating understanding of the UN Guiding Principles among hotel entrepreneurs in Phuket and nearby provinces. It also provided an opportunity for those involved in the hotel and tourism business to exchange opinions on how to apply UN Guiding Principles to their business operations. The outcome of the project would be analyzed and synthesized to serve as input for NHRC in developing guidelines for government and business enterprises on how to promote business operations that respect human rights in order to create sustainability in the tourism industry, foster economic development, as

well as advance the prosperity of the Thai people as a whole.

In terms of barriers, NHRC, based on literature reviews and focus groups discussions among the NHRC, public sector, private sector and civil society, needs to close gaps as follows:

1. Among the public and private sectors, the duties and responsibilities of NHRC were found to be unclear. They questioned if NHRC had the mandate to investigate human rights violations involving private parties. This is because NHRC had never before recommended redressing and remedying human rights violations for anyone in the business sector. In practical terms, however, it has asked for cooperation in providing information or in mediating conflicts among private parties.
2. Representatives of the public and private sectors still have limited understanding of business and human rights. The UN Guiding Principles provides a broad framework for protecting, respecting and remedying, but without indicating how to put measures into practice.
3. NHRC has insufficient knowledge of risk management for business, as well as capacity to advocate how the private sector could apply human rights tools to minimize the risks associated with business operations. This is because it does not properly manage the knowledge and the database on business and human rights, such as risk identification and assessment, guidelines for the auditing system, and preparation of the annual human rights report for the sector.
4. The issue of trust is also important. The relationship between NHRC and the private sector is very distant. NHRC is viewed as a watchdog for business. Therefore, there is limited engagement and partnership. Instead, they work in

promoting rather than protecting human rights, as it is simply easier to do so.

5. The issue of the human rights abuse perpetrated by the Thai company overseas is very complicated, as it dealt with international cooperation and some requirements to be met prior to lodging the complaint with NHRC. For example, all domestic judicial remedies had to be exhausted first; otherwise, NHRC could consider dismissing the complaint.
6. There are some vulnerable groups that may be affected by business operations, such as ethnic groups, migrant workers, indigenous people, and human rights defenders. Unfortunately, Thailand has not yet ratified the international human rights instruments designed to protect these specific groups. It is therefore possible that they will be left behind in terms of human rights protection.
7. Those involved with business and human rights do not always see how human rights can be articulated within national plans, such as the 20-year National Strategy (2017-2036), the 12th National Economic and Social Development Plan (2017-2021), the Sustainable Development Goals (2015-2030), and the 3rd National Human Rights Plan (2014-2018). Therefore, synergy among them does not yet exist.
8. NHRC takes time to investigate and propose recommendations because of a number of factors. Therefore, it is unable to respond to and redress the issues promptly.
9. Personnel and budget are inadequate to run and perform the duties and responsibilities of NHRC. This results in irregular leverage on business and human rights.
10. Access to NHRC is still difficult for certain groups, such as those who live in

remote areas, people who are illiterate, and those who do not know about the existence of NHRC.

LESSONS LEARNED FROM OTHER NATIONAL HUMAN RIGHTS INSTITUTIONS

National human rights institutions are State bodies with a constitutional and/or legislative mandate to protect and promote human rights. They are part of the State apparatus and are funded by the State. However, they operate and function independently from governments. All national human rights institutions around the world have different features and vehicles to perform their duties and responsibilities. Six models of national human rights institutions exist across all regions of the world today, namely human rights commissions, human rights ombudsman institutions, hybrid institutions, consultative and advisory bodies, institutes, centers and multiple institutions.¹⁶ The authors have studied and looked through the three national human rights institutions, namely those located in Denmark, Malaysia and South Korea. The substance of the review is as follows:

Denmark Institute of Human Rights (DIHR), previously known as the Danish Center for Human Rights, was established in 1983. DIHR has been very successful in the implementation of business and human rights through the initiation in 2011 of the National Action Plan for Business and Human Rights (NAP). NAP was created in partnership with the Danish government, the Danish Institute for Human Rights and such civil society organizations as the International Corporate Accountability Roundtable. NAP provides the tools and direction for the risks associated with business, such as the Sector-wide Impact Assessment,¹⁷ Human Rights

¹⁶ <http://nhri.ohchr.org/EN/AboutUs/Pages/RolesTypesNHRIs.aspx>.

¹⁷ <https://www.humanrights.dk/business/tools/sector-wide-impact-assessments-swia>.



Impact Assessment Toolbox,¹⁸ Human Rights and Environmental, Social and Health Impact Assessment,¹⁹ Human Rights and State-Investor Contract,²⁰ Children's Rights in Impact Assessment,²¹ and Human Rights Compliance Assessment.²² Moreover, DIHR is also very progressive in developing its materials and practices for other national human rights institutions, such as the Guideline for Monitoring Business and Human Rights in Sierra Leone,²³ the Toolkit on National Action Plans for Business and Human Rights,²⁴ the Human Rights and Business Country Guide,²⁵ and the Global Compact Self-assessment Tool.²⁶

National Human Rights Commission of Malaysia (SUHAKAM) was established in 1999. SUHAKAM has been very alert in complying with business and human rights guidelines following the adoption in 2011 of the UN Guiding Principles. SUHAKAM studied and initiated a research project with the Raoul Wallenberg Institute on the Role of SUHAKAM in Addressing Corporate Human Rights Violations: A Study on Logging and Plantation Industries in Malaysia.²⁷ This research project was aimed at conducting a baseline study in relation to business and human rights. Subsequently, SUHAKAM carried out

the National Inquiry on Land Rights of Indigenous Peoples in Malaysia.²⁸ The said national inquiry has broadened SUHAKAM's view on how issues concerning business and human rights could cause adverse impacts for the country. SUHAKAM also has for the last two years continued to research the Impact of the Trans-Pacific Partnership Agreement on Human Rights in Malaysia²⁹ and the Roundtable Discussion on the Promotion of Human Rights and Business in Malaysia. Given all the information that SUHAKAM has studied and collected, it was decided to develop the Strategic Framework for a National Action Plan on Business and Human Rights³⁰ for the government. This plan was comprehensively and thoroughly discussed and heard by multi-stakeholders, such as the public sector, private sector, academia, media, civil society organizations, and the communities affected. Lastly, SUHAKAM has worked closely with Bursa Malaysia (the Stock Exchange Commission of Malaysia) to establish a new index called "FTSE4Good," which provides that all listed companies are required to achieve a specified FTSE4Good Environmental, Social, and Governance rating, including human rights section, in order to be listed in the index.³¹ Although these activities of SUHAKAM have pushed the matter forward, the response from the government has not yet been satisfactory.

National Human Rights Commission of Korea (NHRCK) was established in 2001. NHRCK has followed the UN Guiding Principles under three pillars,³² namely (a) regulation and national policy; (b) founding on mutual consensus; and (c) promotion

¹⁸ <https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-and-toolbox>.

¹⁹ <https://www.humanrights.dk/business/tools/human-rights-eshia>.

²⁰ <https://www.humanrights.dk/business/tools/human-rights-state-investor-contracts>.

²¹ <https://www.humanrights.dk/business/tools/childrens-rights-impact-assessments>.

²² <https://hrca2.humanrightsbusiness.org/>.

²³ <https://www.humanrights.dk/business/tools/guidelines-monitoring-business-human-rights-sierra-leone>.

²⁴ <https://www.humanrights.dk/business/tools/national-action-plans-business-human-rights>.

²⁵ <https://www.humanrights.dk/projects/human-rights-business-country-guide>.

²⁶ <https://www.humanrights.dk/business/tools/the-global-compact-self-assessment-tool>.

²⁷ <http://www.suhakam.org.my/business-and-human-rights/>.

²⁸ <http://www.forestpeoples.org/sites/fpp/files/publication/2013/07/suhakam-enquiry-full-text2013.pdf>.

²⁹ <https://www.ftamalaysia.org/article.php?aid=259>.

³⁰ <http://www.suhakam.org.my/strategic-framework-on-a-national-action-plan-on-business-and-human-rights-for-malaysia-2015/>.

³¹ FTSE. (n.d.). *Frequently Asked Questions*. <http://www.ftse.com/products/downloads/FAQ-FTSE4Good-Bursa-Malaysia.pdf>.

³² <http://www.ohchr.org/Documents/Issues/Business/2015Survey/RepublicKorea.docx>.

on international cooperation.

With regard to the first pillar, many activities have been consistently conducted to foster business and human rights through allies of NHRCK, such as Conducting Case Studies to Disseminate a Business Culture that is Human Rights Friendly and an Investigation into the Reality to Establish an Advanced Model (2011), Conducting Research on Improvement of Laws, Policies and Systematic Practices Related to Businesses and Human Rights (2012), Conducting an Investigation into the Reality of Human Rights Infringement by Overseas Korean Companies (2013), Conducting a Case Study Regarding the Human Rights Impact Assessment of Overseas Businesses (2014), Developing Indicators to Evaluate Best Practices in Human Rights Management (2014), Conducting an Investigation into the Reality of SME's Human Rights Management and Exploring Measures to Improve Systems (2014), and Research Outsourcing for the National Action Plan (NAP) on Business and Human Rights (2015). Apart from research and investigation, NHRCK has also produced publications, namely Business and Human Rights Report (2013), and Guidelines for Human Rights Management and Checklist (2014). Lastly, NHRCK has proposed to public institutions recommendations for the implementation of the Guidelines for Human Rights Management and Check List (2014).

The second pillar is aimed at creating domestic consensus on business and human rights so as to encourage businesses to voluntarily respect human rights. Specifically, consensus on the need for businesses to respect human rights is disseminated among businesses and other stakeholders, including consumers and investors, to help businesses focus on the issues of business and human rights so that they would be able to achieve their economic goals. In this regard, NHRCK has organized the Human Rights Management Forum every year since 2010; it translates and distributes international documents concerning business and human rights, such the Policy Framework for Business and Human Rights (2010), OECD Guidelines for Multinational Enterprises (2011), UN Guiding Principles on Business and

Human Rights (2011), Guide to Human Rights Impact Assessment and Management (2014), and UN Guidance on National Action Plan on Business and Human Rights (2015). A total of 269 people have been trained through seven education programs since 2011.

The last pillar involves NHRCK participating in international conferences, such as the UN Forum on Business and Human Rights hosted by the UN Working Group on Business and Human Rights, or by hosting lectures and international conferences where prominent overseas figures are invited to speak.

It should be noted that the National Human Rights Commission of Korea recommended that the government develop a national action plan on business and human rights based on the UN Guiding Principles 2011, but the government did not reflect the details of the recommendation when it established its National Action Plan in 2012. However, in December 2014, the UN Working Group on Business and Human Rights provided the Commission with UN Guidance on the National Action Plan on Business and Human Rights, and in 2015 NHRCK outsourced research on the plan on business and human rights in order to formulate draft recommendations that sufficiently considered the Guidance. The research was scheduled to be completed by November 2015. Based on the result, the Commission would make recommendations for the consideration of the government regarding the establishment in 2016 of the National Action Plan on Business and Human Rights.

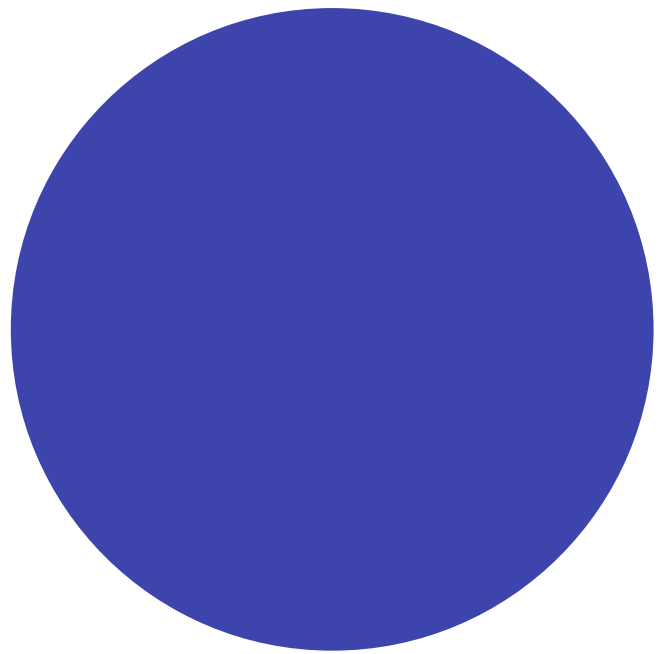
A MACRO PERSPECTIVE IN LOOKING AHEAD AT BUSINESS AND HUMAN RIGHTS

This research project provides foresight concerning business and human rights trends over the next three years based on enabling factors, threats and challenges, of which the National Human Rights Commission of Thailand must be aware in order to respond promptly and effectively to contingent circumstances. Future trends regarding business and human rights fall into four categories: economic

dimensions, social dimensions, environmental dimensions and political dimensions.

In respect of the economic dimension, eight issues involve business and human rights as follows:

1. Non-tariff barriers to trade will be applied increasingly by foreign traders, as they are required to respect human rights in business operations.
2. New technology creates new science and wisdom, enabling: the supply chain to manage its business effectively; the public to access information for monitoring human rights violations; the public to express its concerns about privacy issues and cybercrime; the public to adopt a more convenient lifestyle; manufacturers to use robots and computers instead of labor, resulting in a higher unemployment rate; and the gap between powerful and vulnerable groups to widen as inequality increases.
3. Economic growth in developed countries, through such new schemes as the international Trans-Pacific Partnership Agreement (TPPs), would result in the mobilization of capital, which would then flow into developing countries for project development, and could affect the local population's rights and way of life.
4. In Thailand, economic growth will start shrinking, which will result in budget cuts and the lay-off of staff. This would affect the security of labor and the quality of consumer products.
5. The government will tend to invest in megaprojects, which may cause negative impacts in the communities where people live.
6. Thailand is a global hub for supply chains and services; therefore, it should be concerned about how supply chains in upstream, mainstream and downstream businesses could manage their business



while respecting human rights.

7. Thailand is now challenged with regard to the conflict between those who fight for dignity and human rights and those who focus on economic growth. Their clashes result in the failure to obtain the "social license" to operate.
8. The emergence of the ASEAN Community enables cooperation in addressing regional human rights issues.

As for the social dimension, five issues involving business and human rights are as follows:

1. The rapidly aging population will affect the labor force in the future; the movement of migrant workers will result in conflicts between local and alien workers, as well as human trafficking; and the demand for doctors and medical treatment will rise because of the growing number of elderly persons in the population.
2. The adoption of the Sustainable Development Goals enables governments, including Thailand, to commit seriously



to addressing a number of serious problems, including human rights matters. The process of inclusive participation will be secured under the theme of Goals, that is, that no one will be left behind in the development process. Further, business must concentrate its efforts more in helping to rebrand its image and reputation, resulting in consumer creditability and further collaboration in partnerships.

3. Transnational crime and international organized crime in Thailand is becoming a greater concern as it is being targeted by criminals and terrorists to distort the market system and cause insurgency.
4. Social movements will be strengthened to push forward the issues relating to business and human rights.
5. Consumers and communities tend to focus more on social and environmental issues; hence, business must build trust and credibility in order to obtain a social license to operate.

With regard to the environmental dimension, two issues will involve business and human rights, as follows:

1. National resources are limited, but they are being degraded, which will lead to exploitation, human rights abuses, physical violence, and conflict.
2. Distribution of national resources in an unequal manner would be led to social and economic disparity, and conflict.

Finally under the political dimension, the following four issues will be of concern in terms of business and human rights:

1. Governance in Thailand is weak because of (a) a lack of integrated cooperation and synergy; (b) interference in human rights investigation by powerful figures under the patronage system; and (c) government officials may become corrupt

and involved in human rights violations.

2. State-owned enterprises pay less attention to human rights and lack effective grievance mechanisms. Some of them do not recognize human rights issues in their codes of conduct or policy.
3. Rules and regulations become a drawback for human rights protection because (a) they are not in line with international standards; (b) the legislative process consumes a long period of time prior to the enforcement of laws; (c) regulatory impact assessment is not conducted before enactment, resulting in scams and inappropriate application of laws in the long run; (d) the “regulatory guillotine” is ineffective, resulting in legal overlap; and (e) all stakeholders, including minorities, the vulnerable, and other adversely affected groups, are not fully included in the participatory process for producing legislation.
4. The judicial system is less operative and unable to follow international standards because of the lack of a just structure, such as safety and security measures for defending human rights, whistleblowers, media and labor unions. Lack of legal protection for the Strategic Lawsuit against Public Participation (SLAPP) results in a breach of human rights.

A MICRO PERSPECTIVE IN LOOKING AHEAD AT BUSINESS AND HUMAN RIGHTS

Apart from the macro perspective, there could be several impacts on different actors with regard to business and human rights in the micro perspective as well, namely (a) government and State-owned enterprises; (b) business; (c) society and communities; (d) partners and allies (NGOs, academics, media, etc.); and (e) international entities. It is important that the National Human Rights Commission of Thailand engage closely with the

Table: Micro perspectives on business and human rights through five different actors

Government and State-owned enterprises	Business	Society and communities	Partners and allies	International entities
Government is put under pressure by the international community to develop a national action plan. It is now in the process of developing such a plan.	Lack of awareness of business and human rights issues, as well as their impact causes indifference in respecting human rights.	Limited knowledge of business and human rights obstructs social monitoring as it involves human right violation.	There are alternative monitoring methods to work in parallel with competent public agencies so that human rights issues associated with business can be raised among the broad society and various communities.	International entities play an important role in developing universal standards and norms in human rights protection.
Issues based on businesses and human rights are linked with trans-multinational and cross-border companies, which are more complicated to resolve.	Cooperation with the National Human Rights Commission of Thailand is still questionable because of trust issues.	Groups primarily abused are labor, migrant workers, various communities and vulnerable persons.	NGOs and the media are strong enough to empower social movements in order to access information and put pressure on the government in terms of human rights protection and public interests.	The Universal Periodic Review requires Thailand to be reviewed and its regulation and performance revised in order to meet with international standards and obligations according to ratified human rights conventions.
Thailand has ratified some international human rights instruments, but enforcement through local regulations and mechanisms does not yet exist. Also, some international human rights standards have not yet been adopted.	There is no internal grievance mechanism and auditing system in business operations, resulting in weakened risk management.	Collective action is strong and supportive so that concerns can be voiced.	Limited access to information is regarded as a hardship for academics trying to research and discern the truth. This would lead to better-quality policies and legal recommendations to protect, respect and remedy any violations.	Non-tariff barriers could be a tool to sanction Thailand if it does not protect human rights and redress wrongs promptly and effectively.
Thailand prioritizes certain issues associated with business and human rights, such as human trafficking, rather than conflict over resources deprivation as it causes a domino effect with regard to other perspectives.	Business respects human rights on a voluntary basis. No penalty is imposed for non-compliance.			International organizations are attempting to measure countries globally on certain issues, including those related to human rights, credibility, transparency and certainty of law, in order to help foreign investors to consider prior investments in Thailand.
Linkages between business and human rights and other national plans are not yet coordinated. Some public agencies are concerned with their own key performance indicators rather than holistic outcomes.	Issues in business and human rights are always connected with megaprojects			
Inadequate protection measures for those who fight for justice and human rights result in fewer incentives for protecting the public's interests.	Businesses are familiar with the concept of corporate social responsibility, but there is no corporate social responsibility in process in business operations.			

actors shown in the Table in order to promote and protect human rights from the adverse effects of business operations.

OVERRIDING THE CHALLENGES AND RECOMMENDATIONS FOR THE NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND

Given the challenges facing the National Human Rights Commission of Thailand as presented previously, including the lessons learned from other national human rights institutions and the future trend of business and human rights, both in terms of the macro and micro perspectives, the Commission should narrow the gap and work closely with stakeholders through the three pillars: the indoctrination pillar; protection and remedy pillar; and capacity-building pillar. Under each pillar, the following recommendations are provided for the Commission to take into account:

(a) The Indoctrination Pillar is aimed at: advocating, advising and exchanging knowledge with the target groups in order to raise awareness among the public; moving forward in developing best practices on business and human rights; building capacity for community leaders, civil society, and NGOs; jointly coordinating research and lessons learned with academic and international entities; and assisting the public sector with regard to policy planning, enhancement of protection schemes and measures, and justice remedies. To achieve these aims, three sub-goals are required, namely (1) database preparation related to business and human rights, such as policy recommendations, lessons learned, and international best practices; (2) new knowledge management to implement the framework of the UN Guiding Principles for business; and (3) regular interactions and partnerships with stakeholders. The recommendations for the Indoctrination Pillar cover the following 13 means:

1. National action plan advocacy and consultations;
2. Extraction of policy recommendations

from compiled complaints and investigations;

3. Technical assistance and information exchange with the public sector;
4. Integration of national plans that include business and human rights concerns;
5. Raising awareness of business and human rights, including supply chain management for the private sector (outreach of the concept of corporate social responsibility as there is already familiarity with this concept);
6. Implementation of human rights due diligence in practice by the business sector;
7. Implementation of the annual human rights report, including the internal process for human rights protection by business;
8. Database development on common issues arising in particular business industries for the purpose of formulating further appropriate recommendations;
9. Partnership with organizations involved in business regulation and associations in order to increase incentives for protecting human rights;
10. Raising awareness of the risks associated with business and human rights among target groups and the public;
11. Management of case studies and lessons learned for access by the public;
12. Expansion of Commission-accessible channels;
13. Partnerships with civil society organizations and communities, partners and allies, and international entities through various forms and activities.

(b) The Protection and Remedy Pillar is aimed at preventing or mitigating human rights violations and improving the remedial system to improve justice and accessibility for all in an effective manner. In order to achieve this pillar, four conditions are required: (a) eradication of limited access of the

Commission for all sectors; (b) alerts and alarm concerning important issues relating to business and human rights; (c) lessons learned for the prevention of business and human rights violations; and (d) enhancement of the remedial mechanism, such as non-judicial mediation. The eight recommendations for the Protection and Remedy Pillar are as follows:

1. Policy recommendations are extracted from compilation of complaints and investigations;
2. Prioritization of issues related to business and human rights in the government sector or in State-owned enterprises, such as megaprojects, conflicts over national resources, and environmental degradation, and reviews of government performance in terms of protecting remedies for human rights abuses;
3. Formulating proposals for drafting legal recommendation concerning business and human rights, such as anti-SLAPP measures, security protection for whistleblowers or human rights defenders, and implementation of regulatory impact assessments;
4. Database development on common issues arising in particular industries for making further appropriate recommendations;
5. Sounding alerts and alarms on particular issues of business and human rights that “businesses,” such as contract farming, human trafficking, conflicts about national resources, environmental degradation, and overseas investment;
6. Implementing non-judicial mediation promptly, fairly, economically, and in an acceptable manner that does not prohibit access to justice by other means;
7. Promotion of human rights protection mechanisms, such as consultancy for complaints about access to justice, remedial mechanisms and legal recommendations;



8. Expansion of the Commission-accessible channels.

(c) The Capacity-building Pillar is aimed at enabling the Commission to address in an effective manner issues of business and human rights by way of helping all staff to understand the concept and direction of the organization. It may be necessary to establish a specific new division in the Commission to be in charge of business and human rights, meaning that more budget and staff are required. Staff should have adequate knowledge and training to support the Commission’s functions.

In order to achieve this pillar, four conditions are required: (a) rebranding of the Commission; (b) preparation of manuals on business and human rights for the staff of the Commission; (c) establishment of a human rights library for collecting essential information and documents, including those on business and human rights; and (d) enhancement of the Commission’s performance indicators and assessments.

The recommendations for the Capacity-building Pillar involve seven means:

1. Improvement of the Commission’s im-



human rights, in order to move forward this issue in a more concrete and effective manner.

CONCLUSION

Human rights violations by businesses tend to occur in current economic, social and political situations. Doing business without concern for, consultation with and consent from, the communities where businesses operate will result in weak risk management, conflict and a bad corporate reputation. Many lessons have been learned from all around the world, such as Bhopal, India;³³ Shell in Nigeria³⁴ or Yahoo in China.³⁵ Thailand is no exception as human trafficking witnessed in the fishing industry, and there have been negative impacts from human rights violations alleged by migrant workers in a chicken farm, as described previously. Thus, it is necessary for companies to understand the global trend of respecting human rights not only in their operations but also their relationships with supply chains.

As such, there have been many international attempts to prevent adverse impacts from human rights violations. One of them has been to develop international human rights standards and practices for States, and businesses to follow, such as the UNGC, UNGP, OECD Guidelines, although they are implemented just on a voluntary basis, meaning that there is no enforcement backed up by punishment for non-compliance. It should be noted that recent advocacy and campaigns in business and human rights have led global businesses to be more concerned about these issues now than had been the case previously

- age as a friend for providing support and assistance related to human rights promotion and protection;
2. Recognition inside the Commission about the definition and scope of its responsibilities in order to protect human rights and remedy violations effectively;
3. Establishment of a new division on business and human rights to work with multidisciplinary teams;
4. Preparation of a manual on business and human rights for the staff;
5. Development of the workforce and structure of the Commission to respond to issues without delay;
6. Establishment of a human rights library collecting all essential information and documents, including those on business and human rights, as well as enhancement of the Commission's performance indicators and assessment;
7. Development of the monitoring, coordination and evaluation processes, such as complaint status, internal/external audits, and annual report on business and

³³ Business & Human Rights Resource Centre. (2016). "Union Carbide/Dow lawsuit (re Bhopal)." <https://business-humanrights.org/en/union-carbidedow-lawsuit-re-bhopal>.

³⁴ Business & Human Rights Resource Centre. (2016). "Shell lawsuit (re Nigeria - Kiobel & Wiwa)." <https://business-humanrights.org/en/shell-lawsuit-re-nigeria-kiobel-wiwa>.

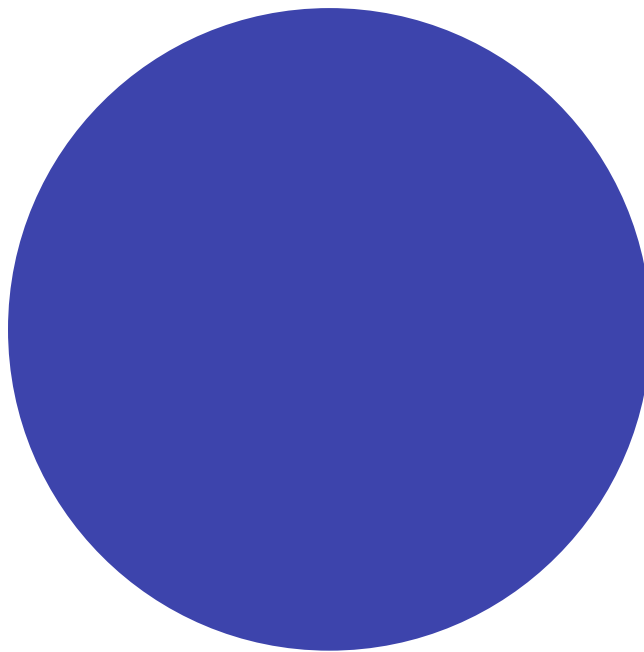
³⁵ Business & Human Rights Resource Centre. (2016). "Yahoo! lawsuit (re China)." <https://business-humanrights.org/en/yahoo-lawsuit-re-china-0#c9340>.

as they have become more aware of the foreseeable risk associated with business and human rights issues. While global businesses have made major advances in respecting human rights, most Thai companies (listed companies, State-owned enterprises, private companies, small and medium-sized enterprises) remain unaware. They do not know how or are unwilling to implement this principle within their businesses as this would increase costs and the resources needed for their operations.

The National Human Rights Commission of Thailand should step in to facilitate and assist Thai companies see the linkage between sustainable growth when doing business while respecting human rights and encouraging them to follow international human rights norms, including those related to the environment and social risk management. That said, the possibility of doing so may not be as simple as might be expected due to the fact that the previous relationship between the Commission and corporations was not smooth, especially when it was conducting investigations and issuing summons. The attitude of businesses toward the Commission is not friendly; establishing trust requires collaboration, training, legal arrangements and monitoring so that any conflicts arising in the context of business and human rights would be prevented and mitigated, resulting in a social license being earned so that the business could operate in communities.

It is fundamentally important to raise awareness about human rights together with sustainable development among all kinds of actors because the gap between the powerful and the powerless remains wide. The world in which mankind lives is characterized by a situation in which the powerful have a great deal of influence over the powerless. If the powerless lose valuable resources because of what the powerful majority are pursuing, the powerful will ensure that implementation will be by just and reasonable means.

To achieve the points previously mentioned, a specific set of recommendations must be implemented via the three pillars, namely indoctrination, protection and remedy, and capacity-building. These



recommendations are made under the basis of the existing barriers of the Commission, lessons learned from other national human rights institutes and the foresight of business and human rights in the next three years both in macro and micro views. This tool would be of help for the Commission responding to this issue in a timely, equal and impartial manner and assuring that no one would be left behind from the economic development produced by the corporates.